

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION**

George Novogroder,

Case No. 3:07CV1284

Plaintiff

v.

ORDER

NOM Lima Shawnee LLC,

Defendant

This is a suit between a prospective purchaser, plaintiff George Novogroder, and seller, NOM Lima Shawnee LLC, of property in Allen County, Ohio. Novogroder wanted to buy the property to build and lease a Rite-Aide store. Because the LOM did not receive a signed contract, it rescinded the sale. Novogroder sued here for specific performance.

Following a decision by me, the courts of Alabama adjudicated Novogroder's specific performance claim in favor of LOM.

The parties then came back to this court to litigate LOM's counter claim for slander of title (Novogroder having filed a *lis pendens*, which effectively precluded NOM from selling the property to another buyer). A jury returned a verdict in favor of Novogroder on that claim.

Now Novogroder has filed a bill of costs, claiming he was the prevailing party. (Doc. 161). I deny that application.

The Supreme Court held in *Buckhanon v. W. Va. Dep't of Health & Human Resources*, 532 U.S. 598, 62 (2001), that “a ‘prevailing party’ is one who has been awarded some relief by the court.” This, means that the party must obtain a judicially “material alteration of the legal relationship of the parties.” *Doe v. Hogan*, 421 F. Supp.2d 1051, 1056 (S.D. Ohio 2006).

Novogroder did not get what he wanted – the property. LOM did not get what it wanted – damages for putative wrongful slander of title. Neither party changed the material relationship between the parties: between the two of us – the Alabama courts and this Court, the parties were left exactly where they were when they came in the courthouse doors.

In light of the foregoing, it is

ORDERED THAT plaintiff’s bill of costs be, and the same hereby is denied.

So ordered.

/s/ James G. Carr
Sr. United States District Judge